

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----

|                             |   |                       |
|-----------------------------|---|-----------------------|
| UNITED STATES OF AMERICA,   | ) | File No. 13-CR-253    |
|                             | ) | (DWF/TNL)             |
| Plaintiff,                  | ) |                       |
|                             | ) |                       |
| vs.                         | ) | Saint Paul, Minnesota |
|                             | ) | March 3, 2014         |
| MUSTAFA AHMED MOHAMED, also | ) | 10:13 a.m.            |
| known as MUSTAFA MOHAMED    | ) |                       |
| AHMED,                      | ) |                       |
|                             | ) |                       |
|                             | ) |                       |
| Defendant.                  | ) |                       |

-----

BEFORE THE HONORABLE TONY N. LEUNG  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE  
**(MOTIONS HEARING)**

APPEARANCES

|                    |  |
|--------------------|--|
| For the Plaintiff: | UNITED STATES ATTORNEY<br>BRADLEY M. ENDICOTT, AUSA<br>CAROL M. KAYSER, AUSA<br>300 South Fourth Street<br>Suite 600<br>Minneapolis, Minnesota 55415 |
| For the Defendant: | RIVERS LAW FIRM, P.A.<br>BRUCE M. RIVERS, ESQ.<br>701 4th Avenue<br>Suite 300<br>Minneapolis, Minnesota 55415  |
| Court Reporter:    | CARLA R. BEBAULT, RMR, CRR, FCRR<br>Suite 146 U.S. Courthouse<br>316 North Robert Street<br>Saint Paul, Minnesota 55101                              |

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

**I N D E X**

| <u>OFFICER MATTHEW SCHMIDT</u>       | <u>PAGE</u> |
|--------------------------------------|-------------|
| Direct Examination by Mr. Endicott   | 22          |
| Cross-Examination by Mr. Rivers      | 33          |
| Redirect Examination by Mr. Endicott | 37          |
| Recross-Examination by Mr. Rivers    | 44          |

1                                   P R O C E E D I N G S

2                                   IN OPEN COURT

3  
4                   THE COURT:   This the United States District Court  
5                   for the District of Minnesota and the case before the bench  
6                   this morning for hearing on a number of motions is captioned  
7                   as follows:

8                   The United States of America versus Mustafa Ahmed  
9                   Mohamed, and it is case number 13-253. And at this point,  
10                  Government, please identify yourself for the record.

11                  MR. ENDICOTT:   Good morning, your Honor.  
12                  Assistant United States Attorney Bradley Endicott for the  
13                  Government. With me at counsel table is Assistant United  
14                  States Attorney Carol Kayser.

15                  THE COURT:   Good morning.

16                  Mr. Rivers, for Mr. Mohamed.

17                  MR. RIVERS:   Bruce Rivers on behalf of Mr. Mohamed  
18                  who is in the court and in custody.

19                  THE COURT:   Good morning, Mr. Mohamed.

20                  All right. There are a number of motions,  
21                  Mr. Rivers, that have been filed. The Government has I  
22                  think one motion. What I do is, you know, figure out which  
23                  motions are going to be submitted on the papers and which  
24                  ones we want live testimony on. And I know there's a Motion  
25                  to Dismiss Count 2, I believe. And then there's some other

1 motions that I don't know which ones you're submitting or  
2 not.

3 MR. RIVERS: Your Honor, before we get to that,  
4 there is an issue with regard to representation.

5 THE COURT: Okay.

6 MR. RIVERS: I think Mr. Mohamed would probably  
7 like to be heard. Should we approach, your Honor?

8 THE COURT: Yeah, sure, the lawyers should  
9 approach. The record should reflect that we're having a  
10 sidebar regarding the issue related to representation.

11 (Discussion held off the record.)

12 THE COURT: Back on the record. Given that  
13 it's -- apparently the issue is related to representation, I  
14 would ask the Government at this time to leave the courtroom  
15 so I can do an inquiry. Thank you. And also, of course,  
16 the Government witness.

17 (Mr. Endicott and Ms. Kayser and Witness Schmidt  
18 exited the courtroom; proceedings filed under seal.)  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CARLA R. BEBAULT, RMR, CRR, FCRR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5 (Pause in proceedings; end of sealed proceedings.)

6 THE COURT: The record should reflect that  
7 Mr. Endicott, Ms. Kayser, and a person that looks like a  
8 legal law enforcement officer is in the back in uniform. So  
9 those three are back in the courtroom and they were outside  
10 the earshot of the discussions here in court.

11 So at this time we're proceeding forward with the  
12 motions and at this Mr. Rivers, with respect to the motions,  
13 what I like to do is let's go through by document number  
14 which motions we're submitting on the papers and then  
15 specifically which motions we will be having testimony, and  
16 then obviously the specific issues that are being challenged  
17 with respect to the motions for which we have live  
18 testimony.

19 Should we start with Document 13?

20 MR. RIVERS: As the Government noted, that's moot.  
21 In fact, that is moot but if you would like me to go  
22 through --

23 THE COURT: Yeah. Well, let's just go through  
24 them one at a time if you don't mind.

25 MR. RIVERS: Right.

1 THE COURT: Because in the end we have to issue an  
2 order and, you know, we want to cover everything. So 13 is  
3 moot. Government's position on that?

4 MR. ENDICOTT: The Government would agree we're  
5 not aware of any confidential informants being used in the  
6 case.

7 THE COURT: If you could slow down and speak a  
8 little more clearly. I was having trouble hearing and the  
9 court reporter might have the same issue.

10 MR. ENDICOTT: Yes, your Honor. We would concur  
11 that the Docket Number 13 is moot. The Government is not  
12 aware of any confidential informants being used in this  
13 case.

14 THE COURT: Okay. All right. So Document 14,  
15 Defendant's Motion for Disclosure of Rule 404 Evidence.

16 MR. RIVERS: That's just on the papers, Judge.

17 THE COURT: The Government, anything else on that?  
18 Do you want to submit it on the papers?

19 MR. ENDICOTT: Nothing further on that, your  
20 Honor.

21 THE COURT: Well, what's the Government's position  
22 on that?

23 MR. ENDICOTT: As we've submitted them on the  
24 papers.

25 THE COURT: All right. Okay. Document 15,

1 Defense Motion for Disclosure of Electronic Surveillance,  
2 Wiretapping Evidence. Mr. Rivers.

3 MR. RIVERS: That motion is moot so just on the  
4 papers.

5 MR. ENDICOTT: We agree, your Honor.

6 THE COURT: Okay. Is this being submitted on the  
7 papers or is it moot?

8 MR. RIVERS: Sorry, Judge, it's moot.

9 MR. ENDICOTT: It's moot.

10 THE COURT: Can you explain it, please?

11 MR. RIVERS: Your Honor, when we filed these  
12 motions it was prior to receiving discovery in the case and  
13 we have learned that there is no wiretapping evidence in the  
14 case so it is moot.

15 THE COURT: The Government, is that your position  
16 as well?

17 MR. ENDICOTT: Yes, your Honor, that is our  
18 understanding.

19 THE COURT: Okay. Doc 16, Defense Motion for  
20 Participation in Voir Dire. Mr. Rivers.

21 MR. RIVERS: I think that's a motion that could be  
22 better addressed just prior to trial in a Motion in Limine.

23 THE COURT: The Government, Mr. Endicott?

24 MR. ENDICOTT: Yes, your Honor. As we stated in  
25 our papers, that's probably more appropriate for a later

1 time during a Motion in Limine.

2 THE COURT: Mr. Rivers, are you withdrawing that  
3 for purposes of this hearing and reserving it for future  
4 argument in front of the trial judge?

5 MR. RIVERS: That's correct, Judge.

6 THE COURT: Okay. Doc 16, Defendant's Motion For  
7 Early Disclosure of Jencks Act Materials. Mr. Rivers.

8 MR. RIVERS: We'd leave that on the paper, Judge.

9 THE COURT: Government, anything else, or are you  
10 relying on the papers?

11 MR. ENDICOTT: We're relying on the papers. We  
12 would object to any specific order for early disclosure of  
13 Jencks material. Of course the Government will comply with  
14 the act as we stated in the papers, your Honor.

15 THE COURT: Okay.

16 MR. RIVERS: And, your Honor, I believe that was  
17 Document 17 and not 16.

18 THE COURT: You are correct, Mr. Rivers. It is  
19 Document 17. I apologize.

20 MR. RIVERS: I don't mean to correct you, Judge.

21 THE COURT: That's all right.

22 All right. Document 18, Defendant's Motion to  
23 Compel the Government's Attorney to disclose evidence  
24 favorable to the Defendant. Mr. Rivers, do you want to  
25 submit that one on the papers or how do you want to do it?

1 MR. RIVERS: That's correct, Judge.

2 THE COURT: Government, what's your position on  
3 that?

4 MR. ENDICOTT: We'll submit that on the papers as  
5 well, your Honor.

6 THE COURT: Okay. Doc 19, Motion for Government  
7 Agents to Retain Rough Notes. The position of the  
8 Government on this?

9 MR. ENDICOTT: Your Honor, as we state in the  
10 paper, we believe that the motion is moot.

11 THE COURT: How is that?

12 MR. ENDICOTT: For Docket Number 19, your Honor?

13 THE COURT: 19 relating to retention of rough  
14 notes.

15 MR. ENDICOTT: Oh, excuse me, your Honor. We  
16 would only object to any order with -- concerning disclosure  
17 of rough notes. We have already directed agents to maintain  
18 their materials in this investigation.

19 THE COURT: Mr. Rivers?

20 MR. RIVERS: Rather than being moot, it sounds  
21 like they agree the motion should be granted, just on the  
22 papers, Judge.

23 THE COURT: Sounds like -- well, we'll make a  
24 ruling on the papers but it seems to me there's -- the  
25 Government is agreeing to retain rough notes. It's just the



1 use of them that is -- the parties take a different position  
2 on. We'll make a decision based on the submissions. Thank  
3 you.

4 Motion to Suppress Evidence Obtained by Seizure,  
5 namely Defendant's cell phone. Mr. Rivers, do you need  
6 testimony on that point?

7 MR. RIVERS: Yes, your Honor, that's the one issue  
8 we will need some testimony on here today.

9 THE COURT: Okay. The Government should be  
10 prepared to have the witness testify with respect to why it  
11 is the Government needs to get a cell phone. What cell  
12 phone -- I mean, I --

13 MR. RIVERS: If it says cell phone it's an error,  
14 Judge. It was what was obtained from him as a result of the  
15 search. So what was obtained from him was a magazine with  
16 one live round in it.

17 THE COURT: That is covered in another -- in a  
18 motion that I'll mention in a moment, I believe. But this  
19 particular Docket 20 seems to relate specifically to  
20 documents and cell phone.

21 MR. RIVERS: There isn't anything like that in  
22 this case. Then we would withdraw that motion.

23 THE COURT: Okay. We'll note the withdrawal of  
24 that. And, again, we will be addressing, obviously, the  
25 magazine and anything else related to that.

1 Anything else on that, Government, on the  
2 documents and cell phone business?

3 MR. ENDICOTT: Yeah, I believe if it's been  
4 withdrawn, we don't have anything further on that, on the  
5 cell phone, your Honor.

6 THE COURT: Okay. Motion to Sequester in Document  
7 21. Is that similar to the earlier motion with respect to  
8 participation in voir dire? Do you want to handle that the  
9 same way, Counsel?

10 MR. RIVERS: I do, Judge.

11 THE COURT: Okay. So we'll withdraw solely for  
12 purposes of this hearing, but reserve for subsequent motion  
13 with the trial judge.

14 Document Number 22, Motion to Suppress Evidence  
15 Obtained by Search and Seizure. This is the motion that I  
16 thought would cover the magazine, things like that.

17 MR. RIVERS: That's correct.

18 THE COURT: So specifically we're talking about  
19 the magazine and other items seized in connection with the  
20 arrest?

21 MR. RIVERS: That's correct, Judge.

22 THE COURT: Okay. Government?

23 MR. ENDICOTT: That's our understanding, too, your  
24 Honor. In talking with Mr. Rivers last week, the only real  
25 issue before the Court today other than the papers is the

1       arrest incident.

2               THE COURT:   Yep.   And then Motion to Suppress  
3       Statements.   Were there statements?

4               MR. RIVERS:   I don't believe so.   But to the  
5       extent that there are, you know, we would persist in that  
6       motion; but I believe that's probably moot if there weren't  
7       any.   I don't have any evidence that there were.   I don't  
8       know what's going to come out of here today.

9               THE COURT:   Government, statements?   Do we have  
10       statements in this one from the Defendant?

11              MR. ENDICOTT:   There is a statement that  
12       Mr. Mohamed made during the arrest incident which Officer  
13       Schmidt will testify to today, your Honor.   There are also  
14       some consensually recorded jail calls that aren't part of  
15       the motions record before you, but those will obviously be  
16       statements that will be an issue at trial, too.

17              THE COURT:   So we're talking about the statements  
18       made in connection with the arrest, whether there's a --  
19       they had a right to --

20              MR. RIVERS:   That's correct, your Honor.   We're  
21       not making any motion with regard to the jail calls.

22              THE COURT:   Yeah.   Okay.   So I will consider Docs  
23       22 and 23 as relating to the incident of arrest.

24              All right.   Next, Defendant's Motion for  
25       Suppression of Electronic Surveillance/Wiretapping Evidence.

1 Anything other than what we were talking about the jailhouse  
2 materials?

3 MR. RIVERS: No, your Honor.

4 THE COURT: Okay. So are you withdrawing that  
5 one?

6 MR. RIVERS: Yes, your Honor.

7 THE COURT: Okay. Government, anything else on  
8 that one?

9 MR. ENDICOTT: Nothing further, your Honor.

10 THE COURT: Okay. And last, but not least,  
11 Document Number 33, Motion to Dismiss Count 2 of the  
12 Indictment on Grounds of Insufficient Allegations and  
13 Insufficient Evidence. And at this time then I assume  
14 that's in play.

15 MR. RIVERS: It is, your Honor, and we'd like  
16 testimony on it.

17 THE COURT: Okay. All right. Government,  
18 anything else on that?

19 MR. ENDICOTT: Well, your Honor, I believe that  
20 motion is regarding the Indictment itself. I don't know how  
21 we can necessarily respond to the motion challenging the  
22 Indictment given that it's hard for the Government to see  
23 how there's any information that defense counsel would have  
24 to show incompetent evidence. We would ask the Court to  
25 look at that based on the papers in the Government's

1 response that we submitted on Friday.

2 THE COURT: I'll make that decision after I hear  
3 the testimony from the Government's witness; and I would  
4 assume the Government's witness is going to address elements  
5 that are related to Count 2 as well as the other counts.

6 MR. ENDICOTT: Okay, your Honor.

7 THE COURT: All right. Thank you.

8 MR. RIVERS: Thank you.

9 THE COURT: All right. Those are the lines of the  
10 case before Court at this time.

11 Mr. Endicott, first witness.

12 MR. ENDICOTT: Your Honor, the United States calls  
13 Officer Matthew Schmidt.

14 THE CLERK: Officer, before you take the stand  
15 there, please raise your right hand.

16 (Witness Schmidt sworn by the Court.)

17 OFFICER SCHMIDT: I do.

18 THE COURT: Thank you. Please take the stand,  
19 watch your step up.

20 Officer, when you are ready to testify, please  
21 indicate your readiness by stating and spelling your name  
22 for the record, please.

23 THE WITNESS: My name is Officer Matthew Schmidt.  
24 Matthew, M-A-T-T-H-E-W. Schmidt, S-C-H-M-I-D-T.

25 THE COURT: Thank you, Officer. Are you a

1 licensed peace officer?

2 THE WITNESS: Yes, sir, in the State of Minnesota.

3 THE COURT: And with what department do you work?

4 THE WITNESS: The City of Eden Prairie Police  
5 Department.

6 THE COURT: Mr. Endicott.

7 **DIRECT EXAMINATION**

8 **BY MR. ENDICOTT:**

9 Q. Officer Schmidt, how long have you been an officer with  
10 the Eden Prairie Police Department?

11 A. Just over six years.

12 Q. Were you on duty on May 29th, 2013?

13 A. I was.

14 Q. Were you dispatched to a call on that date?

15 A. I was.

16 Q. Were you dispatched to the address of 13800 Chestnut  
17 Drive?

18 A. Yes.

19 Q. What was the nature of that dispatch call?

20 A. The nature of the call was a citizen complaint from a  
21 tenant of an apartment building that they said that four  
22 black males were in the underground garage smoking  
23 marijuana.

24 Q. What did you do after receiving that dispatch call,  
25 Officer Schmidt?

1 A. I responded to the scene.

2 Q. Were there any other officers that responded to that  
3 scene?

4 A. There were two others. It was Officer Kevin Brown and  
5 Officer Tyler Quesenberry.

6 Q. Who was the first to arrive on the scene?

7 A. Officer Kevin Brown.

8 Q. And were you the next officer to arrive?

9 A. Yes, Officer Quesenberry and I arrived at the same time,  
10 approximately maybe just a minute after Officer Brown.

11 Q. Can you describe the scene that you came upon at 13800  
12 Chestnut Drive?

13 A. Yes, Officer Brown was already there. He was speaking  
14 with the group. There was actually five individuals in  
15 front of a parked vehicle inside the underground garage of  
16 the apartment building.

17 Q. Can you describe this underground garage?

18 A. Yes. So it's just a typical underground garage to the  
19 apartment building. I believe it kind of has a Y shape to  
20 it. And right when I came in through the stairwell, the  
21 group and Officer Brown were maybe 30 feet from me standing  
22 in front of two parked vehicles, and then there was a nearby  
23 dumpster next to them.

24 Q. Other than the responding officers and the young  
25 gentlemen, were there anyone else inside the garage?

1 A. Not that I recall.

2 Q. What happened next?

3 A. So as I and Officer Quesenberry were approaching Officer  
4 Brown, I observed Officer Brown specifically talking to  
5 Mustafa Mohamed within the group. And I heard Officer Brown  
6 tell Mr. Mohamed to take his hands out of his pockets; and  
7 at that point Mr. Mohamed appeared nervous and was fidgety.

8 Q. What happened next?

9 A. So Mr. Mohamed was looking around. In my experience  
10 when someone is, you know, there's a certain level of  
11 nervousness that we expect in my job. When someone talks to  
12 a police officer, this is definitely above and beyond  
13 tension. When they are looking around, in my experience,  
14 someone is planning on fighting or fleeing from us. So it  
15 kind of raised our suspicion levels. Officer Brown told him  
16 to take his hands out of his pockets multiple times; the  
17 hands were coming in and out of the pockets, his front  
18 jacket pockets. And at that point Officer Brown, I believe  
19 he did what we call an escort hold. Just kind of grabbed an  
20 arm and walked him to the car that's parked in the adjacent  
21 stall to separate him just slightly from the group.

22 Q. So Mr. Mohamed was not complying with police commands?

23 A. Correct.

24 Q. Do you see Mr. Mohamed in the courtroom today?

25 A. I do.



1 Q. Seated at defense counsel table?

2 A. Correct, in the orange suit.

3 Q. What, if anything, did Mr. Mohamed say to you about  
4 marijuana?

5 A. Well, when Officer Brown separated him -- and due to his  
6 behavior, I believe Officer Brown was going to be performing  
7 a *Terry* frisk on him. And I think he told Mohamed that he  
8 was going to be searching him; and Mr. Mohamed said at that  
9 point, "I can't believe you guys are searching me for a  
10 joint."

11 Q. What happened after that?

12 A. So while that was going on, simultaneously another  
13 member of the group split off and started to walk away  
14 essentially from us without direction to do so, and started  
15 to act like what I would describe looking around. And I  
16 think the intent was that this other individual was looking  
17 like they were looking for this joint that they thought we  
18 were concerned about. And I believe that was a distraction  
19 from Officer Brown trying to speak with Mr. Mohamed.

20 Q. So just to go back, there was one of the five tried to  
21 split away from the group?

22 A. Correct.

23 Q. Was that Aydiid Isaak?

24 A. Aydiid, I believe so.

25 THE REPORTER: Could you spell that for me,

1 please?

2 MR. ENDICOTT: Spelled A-Y-D-I-I-D, I-S-A-A-K.

3 BY MR. ENDICOTT:

4 Q. Is that correct?

5 A. Yes.

6 Q. So what happened after Mr. Isaak split from the group?

7 A. So when Mr. Isaak split from the group, he, like I said,  
8 walked to a nearby dumpster, was making motions like he was  
9 looking around, looking under the dumpster. We told him to  
10 stop. He would then speak in a different language, which  
11 sounded familiar to me like Somali, to Mr. Mohamed. We told  
12 Mr. Aydiid to not speak in another language and to stop  
13 looking around and to stop walking away. He continued to do  
14 that and he continued to talk in a foreign language, and  
15 then started to look into the -- inside the dumpster at  
16 which time Officer Quesenberry and I had to physically stop  
17 him and restrain him at the dumpster to prevent him from  
18 going and moving away even further.

19 Q. Before we get into you and Officer Quesenberry's actions  
20 with Mr. Isaak, I need to ask, do you or any of the other  
21 officers -- did you understand this language that the  
22 gentlemen were speaking?

23 A. As far as comprehend, no. Though there's a significant  
24 Somali population in Eden Prairie and I do have frequent  
25 contact with it. I couldn't say with absolute certainty

1 that was the language, but just off of my previous  
2 experience I believe that's what they were speaking.

3 Q. And, again, who were speaking to each other in the  
4 Somali language?

5 A. It is specifically between Isaak and Mohamed.

6 Q. After you and Officer Quesenberry got or detained  
7 Mr. Isaak, what happened next?

8 A. So when both my and Officer Quesenberry's attention were  
9 fully drawn to Mr. Isaak, I observed Officer Brown was  
10 attempting to search Mohamed at which point Mohamed started  
11 to walk away from Officer Brown. And I specifically heard  
12 Officer Brown tell him to stop and that he was going to be  
13 tased if he did not stop.

14 Q. When you told Mr. Isaak to stop speaking, did he comply  
15 with your orders?

16 A. No, he did not.

17 Q. Did Mr. Mohamed comply with Officer Brown's orders to  
18 stop?

19 A. He did not.

20 Q. What happened next?

21 A. So, as I previously said, Officer Brown was at the car  
22 very next to where the group was originally standing in  
23 front of. It was a minivan that Mr. Mohamed and Officer  
24 Brown were standing in front of. So when Mr. Mohamed  
25 started to walk away from Officer Brown, he walked towards

1        what would be the front of the car away from Officer Brown,  
2        and then started to circle around the front of that vehicle  
3        away from Officer Brown, as he was repeatedly telling him  
4        commands to stop or he would be tased.

5        Q.    So did Mr. Mohamed move to an area between two parked  
6        cars?

7        A.    Yes.    Once he walked around the front of the van, he  
8        walked then in between the two parked vehicles.

9        Q.    What happened then?

10       A.    So at that point Officer Quesenberry had Izaak  
11       controlled, so I moved over in between the cars and started  
12       to walk towards in between the cars to assist Officer Brown.

13       Q.    And what was Officer Brown telling Mr. Mohamed at this  
14       time?

15       A.    Again, repeatedly telling him to stop and that if he  
16       didn't stop he would be tased.    At that point, right when I  
17       was walking up between the cars, Mohamed was walking between  
18       the cars towards me and then he started to crouch down and  
19       go to the ground and I saw both his hands go to his front  
20       jacket area.

21       Q.    Could you see his hands?

22       A.    I could not.    The underground garage, as it was, was  
23       poorly lit and even more so between the two parked cars.    It  
24       was extremely dark.    So I could only just see just his rough  
25       outline.    Other than his hands going underneath him as he

1 was starting to crouch down.

2 Q. What did Mr. Mohamed do next after he crouched down?

3 A. So after he crouched down, Officer Brown deployed his  
4 taser and Mohamed yelled out in pain or as if the taser had  
5 an effect on him. So after the taser was deployed, Mohamed  
6 at that point, that's when I actually saw his hands go out,  
7 up and out to the side as one would expect when  
8 surrendering.

9 Q. What did you do after that?

10 A. So after the taser was deployed and it completed its  
11 cycle, I went and handcuffed Mohamed behind his back,  
12 searched just the immediate area behind his back, and then I  
13 picked him up and removed him to a nearby stairwell.

14 Q. Did you find anything on Mr. Mohamed's body?

15 A. At that moment, no.

16 Q. Okay. At what point -- or tell us what did you do next  
17 after that?

18 A. Sure. So with this whole situation, I removed him just  
19 maybe to a, as I said, a nearby stairwell. I didn't enter  
20 the stairwell so I was still inside the underground garage.  
21 At that time Officer Quesenberry handcuffed Isaak and then  
22 between Officer Brown and Quesenberry we detained the rest  
23 of the group until we determined who was going to be a  
24 threat and the scene was made safe for us.

25 Q. And what happened after that?

1 A. So after everyone was detained and the scene was made  
2 safe, I conducted another secondary search of Mohamed.

3 Q. And how did you conduct this search?

4 A. So, again, it was kind of more of a *Terry* search where  
5 as the initial one was just an immediate area by where his  
6 hands were, now I'll kind of search the rest of his body for  
7 weapons, guns, knives, anything that is large enough to harm  
8 me or my partner.

9 Q. And what did you find?

10 A. In his left jacket pocket I found a handgun magazine and  
11 a knife. I believe it was a folding knife. And in his back  
12 pocket I found his license and a license for another  
13 individual whom he identified as his brother.

14 Q. Were there any rounds inside the magazine?

15 A. There was at least one at the top that I saw. I did not  
16 count the rounds at that time.

17 Q. But you saw at least one round?

18 A. Correct.

19 Q. And were both of these items found inside Mr. Mohamed's  
20 jacket left pocket, left front pocket?

21 A. Correct.

22 Q. What happened after you recovered these items?

23 A. So after I recovered those two items, and the rest of  
24 the group was, like I said, made safe, then I kind of  
25 addressed his taser wounds, so to speak. So I documented

1 the taser problems with the photograph, removed the probes,  
2 and then I just wiped his -- one taser probe went into his  
3 middle back. One went into his belt. So the one that  
4 actually went into his skin, I actually cleaned that area  
5 off. And then at that point I placed him in my squad car.

6 Q. What, if anything, did Mr. Mohamed say to you when you  
7 placed him into your squad car?

8 A. So as I placed him in my squad car I heard something  
9 drop and he said, "Something fell out of my jacket."

10 Q. And what did you do next?

11 A. So I had him stand back outside of my squad car and I  
12 looked at the floorboard and I saw a loose 9 millimeter  
13 round similar to that that was in the magazine.

14 Q. Did you also recover that round?

15 A. At that point, yeah, I removed the round and I recovered  
16 it.

17 Q. Officer Schmidt, were any other items recovered that  
18 day?

19 A. Yes. There was a 9 millimeter handgun recovered  
20 underneath the vehicle that Mr. Mohamed was lying next to.

21 Q. Was that the vehicle that he crouched down next to after  
22 he wasn't complying with police commands?

23 A. That is correct.

24 Q. And was that handgun a Sig Sauer P229 Elite 9 millimeter  
25 handgun?

1 A. I believe so, yes.

2 Q. And that's a handgun that could shoot the same types of  
3 rounds that you recovered from Mr. Mohamed, correct?

4 A. Correct.

5 Q. And that handgun had a serial number AJU06044?

6 A. I believe so, yes.

7 Q. What did you later learn about that handgun?

8 A. I later learned that the handgun was stolen and had been  
9 stolen from a business burglary in another city.

10 Q. Were there any of the other four young men that you  
11 encountered that day, were they ever observed next to that  
12 area by that car?

13 A. No.

14 Q. Was Mr. Izaak ever seen next to that car where the  
15 handgun was recovered?

16 A. He was not.

17 Q. Officer Schmidt, do you have an idea of how that handgun  
18 got there?

19 A. I do.

20 Q. And what is that?

21 MR. RIVERS: Objection, speculation.

22 THE COURT: Overruled.

23 BY MR. ENDICOTT:

24 Q. Go ahead and answer.

25 A. I believe as Mr. Mohamed was going to the ground, that



1 he quickly removed the gun that was in his jacket pocket and  
2 it was placed underneath the car.

3 Q. Okay. Just one moment, your Honor.

4 THE REPORTER: Could you spell Quesenberry?

5 THE WITNESS: Q-U-E-S-E-N-B-E-R-R-Y.

6 MR. ENDICOTT: No further questions.

7 THE COURT: Thank you.

8 Mr. Rivers, when you're ready.

9 MR. RIVERS: Thank you, your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. RIVERS:**

12 Q. Good morning, Officer Schmidt.

13 A. Good morning.

14 Q. This was originally a citizen complaint, correct?

15 A. Correct.

16 Q. And it was somebody there at the apartment complex who  
17 said they smelled some marijuana, right?

18 A. Correct.

19 Q. And how many officers respond?

20 A. To this call it was three.

21 Q. Three officers. Why were three responding?

22 A. Because the original complaint stated that there was  
23 four individuals there.

24 Q. And so how did you gain access to the garage?

25 A. We have what I call a lockbox there. Just a fire

1 department, fire box keys that we have access to if we're  
2 not able to just follow a citizen inside.

3 Q. So is this an underground garage?

4 A. Underground garage.

5 Q. Made of concrete?

6 A. Yes.

7 Q. So when you speak, I suppose your voice kind of echos a  
8 little bit?

9 A. Potentially.

10 Q. And now did you see anybody smoking any marijuana?

11 A. I did not.

12 Q. Did you see anybody throw any marijuana cigarettes?

13 A. I did not.

14 Q. Did you see any marijuana on the ground?

15 A. I did not.

16 Q. So Mr. Mohamed is standing in an area in the garage with  
17 some other gentlemen, correct?

18 A. Correct.

19 Q. And all are African-American, right?

20 A. Yes.

21 Q. And did you smell marijuana?

22 A. I don't recall at this point if I did or not.

23 Q. Well, you didn't put it in your report that you smelled  
24 marijuana, right?

25 A. That's not to say I didn't smell it at the time and I

1 didn't just document it. I just don't at this time recall  
2 that specifically.

3 Q. Well, let me ask you this specifically. Did you  
4 document that you smelled marijuana in your police report?

5 A. I did not.

6 Q. And you never indicate in your report that my client,  
7 Mr. Mohamed, smelled like marijuana, correct?

8 A. Correct.

9 Q. Now, in fact can you point to any crime that he was  
10 committing while he was down there prior to your interaction  
11 with him?

12 A. Prior to any interaction, no.

13 Q. And so you're there investigating a potential marijuana  
14 smell, but you don't know for sure that these boys were  
15 smoking marijuana, do you?

16 A. Not until we go and talk with them, no.

17 Q. Well, in fact the citizen's complaint didn't identify  
18 any particular individual, did it?

19 A. I don't believe so.

20 Q. And the person who made the complaint, they are not  
21 identified in your reports, correct?

22 A. They may be listed as a complainant. I don't -- not in  
23 my report.

24 Q. All right. And now where were you when you first saw  
25 the individuals that you described in your direct testimony?

1 A. So I came in the stairwell entrance, and it would be  
2 maybe 30 feet from the vehicle that the -- the parked  
3 vehicle that they were standing in front of.

4 Q. What kind of vehicle were they standing by?

5 A. I believe it was like a silver sedan.

6 Q. All right. And you indicated that there was some  
7 maneuvering by my client, but you never actually saw him  
8 place a handgun anywhere, correct?

9 A. I did not actually witness him place a handgun, no.

10 Q. But you made the assumption here that that's what he did  
11 because it was found close to him, right?

12 A. Based off of my experience and the circumstances  
13 surrounding the situation and where the handgun was found  
14 later, I did believe that, yes.

15 Q. All right. But you didn't hear anything like a gun  
16 hitting the concrete floor, right?

17 A. No, there was loud verbal commands being yelled by  
18 Officer Brown, as well as the taser activated which causes a  
19 lot of noise.

20 Q. In fact, Mr. Aydiid actually came in and said that he  
21 placed the gun there; isn't that true?

22 A. Yes.

23 Q. And he, in fact, took ownership of the gun, right?

24 A. Correct.

25 Q. And he told you that he found it in North Minneapolis,

1 correct?

2 A. In Minneapolis, yeah.

3 Q. And that he often hides his gun either under a vehicle  
4 or under a dumpster, and sometimes he would even bury it.  
5 That's what he told you, right?

6 A. That's correct.

7 Q. And you told him that you could be responsible for a  
8 crime, right?

9 A. Correct.

10 Q. And he knew that but he came forward anyway, correct?

11 A. Correct.

12 Q. And you also told him that if you're lying to me, you  
13 could also be charged with a crime, right?

14 A. Correct.

15 MR. RIVERS: Nothing further, your Honor.

16 THE COURT: Could both lawyers come up for a  
17 sidebar off the record?

18 (Discussion held off the record.)

19 THE COURT: Government, when you're ready.

20 (Pause in proceedings.)

21 **REDIRECT EXAMINATION**

22 **BY MR. ENDICOTT:**

23 Q. Officer Schmidt, I just have some questions going back  
24 to your approach of these -- of the five young men. Do you  
25 understand?

1 A. Yeah.

2 Q. So you were dispatched to respond to a marijuana call,  
3 correct?

4 A. Correct.

5 Q. And this was at an underground garage?

6 A. Correct.

7 Q. Okay. Can you describe how the officers gained entrance  
8 to this garage first?

9 A. Yeah. You know, I don't specifically remember this  
10 incident, how we got inside. But typically for an apartment  
11 I explained there is a firebox key that we have access to  
12 that has the building keys. We also have, for certain  
13 apartment buildings, have the entry codes if it's been  
14 supplied to us that we can use to get inside.

15 Q. So someone without an entry code, would they not have  
16 access to this underground garage?

17 A. Correct, they would have to follow someone in.

18 Q. So it's a garage presumably underneath a building or the  
19 apartment itself?

20 A. Yes. It's a -- it's underneath the apartment building  
21 itself, and the only entrances would be the actual drive-in  
22 garage door and then the stairwell door.

23 Q. Okay. And you mentioned something about a firebox key.  
24 Where was this firebox key?

25 A. Typically the firebox keys are just kept on the exterior

1 of the building as a means of gaining access by police or  
2 fire.

3 Q. And was it Officer Brown that got access to that key  
4 presumably?

5 A. Presumably. Or again, he could have been let in by a  
6 resident. Or maybe, as I explained, we also have key code  
7 access that's provided to us by the apartment buildings.

8 Q. So when you arrived, was that door already opened or was  
9 it closed?

10 A. I don't recall.

11 Q. Can you recall how soon in time you arrived after  
12 Officer Brown?

13 A. I would suspect less than a minute.

14 Q. What is it in your background and training and  
15 experience that made you know about how to access that type  
16 of garage?

17 A. Well, this particular apartments we've had a number of  
18 calls to. Our apartment underground garages are frequently  
19 hit by car tamper thieves, so we're frequently in the  
20 underground garages to take reports of a, say, a car  
21 break-in. So in field training we're shown how to gain  
22 access into the apartments.

23 Q. And now let's go to the actual approach of the young  
24 men. When you approached the young men, did Officer Brown  
25 have weapons drawn or taser drawn or anything like that?

1 A. He didn't have anything drawn.

2 Q. He was just conversing with these young men?

3 A. That is correct.

4 Q. Can you recall what was being said between Officer Brown  
5 and the men at that time?

6 A. I believe the initial conversation I had was more of  
7 a -- Officer Brown was trying to just ascertain and  
8 requesting that Mohamed keep his hands out of his pockets.

9 THE COURT: Before we move onto that part, how is  
10 it that -- who gives permission for getting into this place?

11 THE WITNESS: The apartments provide us -- certain  
12 apartments provide us access codes to respond inside for  
13 calls of service. In addition, the apartments provide a key  
14 that we have a mutual lockbox that we can use to gain access  
15 inside to the apartments.

16 THE COURT: Obviously the apartment is a building.

17 THE WITNESS: Its's a building. It's a shared  
18 underground garage for all of the residents.

19 THE COURT: But who gave you permission to use  
20 this?

21 BY MR. ENDICOTT:

22 Q. Is this something that the police department has done in  
23 the past, in your training and in your experience?

24 A. Yeah, in my training and experience the apartment  
25 management gives us access to the buildings for the purpose



1 of responding to calls of service. They would consider it,  
2 you know, open access for law enforcement, for fire  
3 department personnel, too, to have access to their grounds  
4 for means of doing our job.

5 Q. Have you ever responded to a call at this particular  
6 address or that parking garage before?

7 A. Yeah, numerous times, like I explained, for tampering  
8 with auto reports. We're requested for extra patrol of  
9 their underground garages for tamper with auto suspects,  
10 suspicious activity, that sort of thing.

11 Q. So for this particular garage, you have responded to  
12 that type of call you just mentioned?

13 A. Yeah, that and many of other underground garages.

14 Q. How many times would you say you visited this particular  
15 garage for such calls?

16 A. Over the six years it would be hard for me to put a  
17 number on it. I don't know. A number of times. I really  
18 don't have a specific number. More than 10.

19 Q. And on those past occasions if the garage was closed,  
20 how would you gain entry to that garage?

21 A. Through the lockbox key or the key code access that was  
22 provided to us.

23 Q. And it's your understanding that all of the tenants in  
24 that building park their cars in that lot?

25 A. Correct.

1 Q. Now, when Officer Brown was --

2 MR. ENDICOTT: Excuse me, your Honor. Should we  
3 go into the cross, the --

4 THE COURT: I thought I asked who provided the  
5 access code or the key.

6 THE WITNESS: The access codes are provided to our  
7 dispatch center. I believe there's an officer that -- or a  
8 dispatcher that maintains that record and it's the apartment  
9 management that gives us that code and that's entered into  
10 our computer system so we have access to it as we need it.

11 BY MR. ENDICOTT:

12 Q. So you would have already had access to that code based  
13 on information relayed from the apartment owner as far as  
14 the code goes?

15 A. Yes.

16 Q. And based on your past experience, you would also have  
17 access to the lockbox based on your past entries in response  
18 to incidents in that garage?

19 A. Yes. The apartment management wants us to have access  
20 to their building.

21 Q. Can you recall which method the officer used to gain  
22 entry this time?

23 A. Like I said, I don't specifically recall how I entered  
24 in this moment.

25 Q. But if the door was closed, it would have been one of

1       those two methods?

2       A.   Yes.

3       Q.   Based on that prior direction from the apartment owner?

4       A.   Correct.

5       Q.   Going back to the incident, Officer Schmidt, did the  
6       other officers smell marijuana when they arrived on the  
7       scene?

8               MR. RIVERS:  Objection, speculation.

9               THE COURT:  I'll take that as a foundational  
10       objection.  Sustained.  And speculation.

11       BY MR. ENDICOTT:

12       Q.   Did the other officers document the smell of marijuana?

13       A.   Yes.

14       Q.   And there were no other groups of young men that were  
15       there matching the description from the dispatch call,  
16       correct?

17       A.   Correct.

18       Q.   In fact, there were no other groups down there other  
19       than these men, correct?

20       A.   Correct.

21               THE COURT:  Well, I'm still sustaining the  
22       objection.  Foundation for the -- the answer was yes.

23               MR. ENDICOTT:  Yes, your Honor.

24       BY MR. ENDICOTT:

25       Q.   Officer Schmidt, was a handgun found within the wingspan

1 or arm span of where Mr. Mohamed was down on the ground?

2 A. It was.

3 Q. And when Mr. Aydiid came to claim ownership of the  
4 handgun, was it during that same day?

5 A. I believe it was a week later.

6 Q. He didn't claim any -- he didn't claim ownership or  
7 possession of the gun at the scene?

8 A. At the scene, no.

9 MR. ENDICOTT: No further questions, your Honor.

10 THE COURT: Okay.

11 **RE CROSS-EXAMINATION**

12 **BY MR. RIVERS:**

13 Q. Officer, I just have a couple of questions related to  
14 this key and access. Is this a general key that fits most  
15 lockboxes?

16 A. Yes.

17 Q. So you don't have a key for every apartment building.  
18 It's just one key that fits these particular type of  
19 lockboxes, correct?

20 A. Correct.

21 Q. And prior to entering the garage, you didn't ask for any  
22 permission from the apartment building owner to gain access  
23 to the garage, correct?

24 A. No. It was a common area of the apartment building and  
25 we traditionally wouldn't require permission while we're

1 investigating a potential crime.

2 Q. Well, this is not an area that's open to the public, is  
3 it?

4 A. It's an open area that is to the residents of the  
5 building, and we were called there by a resident.

6 Q. Okay. Did you understand my question?

7 A. I believe so.

8 Q. Okay. Is it an area that's open to the public?

9 A. To the general public, no.

10 Q. And there's a garage door that locks and you can't get  
11 in there unless you have either a -- probably an opener or  
12 some device that opens it for you if you're a resident,  
13 correct?

14 A. Correct.

15 Q. And the person that you called the resident, you don't  
16 really know who that person is, do you?

17 A. I don't know them personally. I did follow up later and  
18 listen to the 911 phone call that this individual made.

19 Q. Okay. So when you went in there, you didn't know that  
20 the resident's name or who they were or whether they were  
21 even a resident of that complex. You just knew what the  
22 dispatcher told you, right?

23 A. When I receive a call, the name of the caller is on  
24 there. And I believe the call was -- I don't recall  
25 specifically if the dispatcher said it was from a resident

1 or not.

2 Q. Well, the resident didn't meet you outside and say,  
3 "There is where they are," did they?

4 A. No.

5 MR. RIVERS: Nothing further, your Honor.

6 THE COURT: Government?

7 MR. ENDICOTT: Nothing further, your Honor.

8 THE COURT: Okay. Thank you. You may step down.

9 Is the record based solely on the testimony, then?

10 Any other witnesses?

11 MR. ENDICOTT: No other witnesses.

12 THE COURT: Okay. All right.

13 Any other witnesses?

14 MR. RIVERS: No other witnesses, Judge.

15 THE COURT: Okay. All right.

16 Let's get a schedule for briefing.

17 MR. RIVERS: Are you looking to us?

18 THE COURT: Yes, the lawyers should probably chat  
19 a little bit off the record.

20 (Off the record discussion.)

21 THE COURT: Okay. Do you have a proposal on  
22 briefing dates and so forth?

23 MR. RIVERS: Your Honor, we have conferred and if  
24 I could have two weeks to get a brief in and then two weeks  
25 for the Government to respond.

1 THE COURT: So that would be the 17th and the  
2 31st. Is that right?

3 MR. RIVERS: I believe so, Judge.

4 THE COURT: Okay. Will you folks be --

5 Counsel, why don't you double check the trial date  
6 and contact Judge Frank's scheduling folks to see how things  
7 work on that.

8 MR. RIVERS: Sure.

9 THE COURT: All right. Look forward to seeing the  
10 briefs. Thank you.

11 MR. RIVERS: Thank you.

12 MR. ENDICOTT: Thank you, your Honor.

13 (Court adjourned at 11:20 a.m.)

14 \* \* \*

15

16

17 I, Carla R. Bebault, certify that the foregoing is  
18 a correct transcript from the record of proceedings in the  
19 above-entitled matter.

20

21

22 Certified by: s/Carla R. Bebault  
23 Carla Bebault, RMR, CRR, FCRR

24

25

26